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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Land Buy-Back Program for Tribal Nations under *Cobell* Settlement

[133D5670LC DS10100000 DLCAP0000.000000 WBS DX.10120]

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Land Buy-Back Program for Tribal Nations will host its annual Listening Session on April 25, 2017, at the Tulalip Resort Casino's hotel in Tulalip, Washington. As described below, the Program hopes to receive feedback from tribes and individuals on critical issues related to Program implementation, future efforts to reduce land fractionation, and its 2016 Status Report.

DATES: The Listening Session will take place from 1 p.m. to 5 p.m. on April 25, 2017, at the Tulalip Resort Casino's hotel in Tulalip, WA.

ADDRESSES: The Listening Session will be held at the Tulalip Resort Casino's hotel, 10200 Quil Ceda Blvd, Tulalip, WA 98271. The 2016 Status Report on the Program is available at https://www.doi.gov/sites/doi.gov/files/uploads/2016_buy-back_program_final_0.pdf. Submit written feedback on the Program by email to buybackprogram@ios.doi.gov or by mail to U.S. Department of the Interior Land Buy-Back Program for Tribal Nations, 1849 C Street NW, MS-3543, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tribal staff can contact Michael Estes at (202) 642-0912 or at buybackprogram@ios.doi.gov with questions regarding Program implementation. Landowners should contact the Trust Beneficiary Call Center at 1-888-678-6836 with questions or to express their interest in Program participation. Persons who use a

telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

The Land Buy-Back Program for Tribal Nations (Buy-Back Program) is the Department of the Interior's (Department) collaborative effort with Indian Country to realize the historic opportunity afforded by the *Cobell* Settlement – a \$1.9 billion Trust Land Consolidation Fund – to compensate individuals who willingly choose to sell fractional land interests for fair market value. Consolidated interests are immediately restored to tribal trust ownership for uses benefiting the reservation community and tribal members.

Since the Program began making offers in December 2013, more than \$1.1 billion has been paid to landowners, over 680,000 fractional interests have been consolidated (representing a 23 percent reduction), and the equivalent of nearly 2.1 million acres of land have been transferred to tribal governments. Tribal ownership is now greater than 50 percent in more than 13,500 tracts of land. The Program recently released its annual Status Report, which highlights the steps taken to date to consolidate fractional interests:

https://www.doi.gov/sites/doi.gov/files/uploads/2016_buy-back_program_final_0.pdf).

The Buy-Back Program's implementation schedule currently includes 105 locations through mid-2021, which reflects more than 96 percent of all landowners with fractional interests and more than 98 percent of both the purchasable fractional interests and equivalent acres in

Program-eligible areas: (<https://www.doi.gov/buybackprogram/program-implementation-schedule>).

Even with the Program’s significant progress to date – and the results expected through its congressional funding authorization in 2022 – the resources created by the *Cobell* Settlement will not be sufficient to purchase all fractional interests across Indian Country. Sustained Departmental, congressional, and tribal attention will be necessary to address fractionation and maximize the value of the land base for the benefit of tribal communities.

II. Listening Session Agenda

The participation and engagement of tribal nations and landowners have been critical to the success of the Buy-Back Program, and the significant results to date stem directly from that collaboration. The purpose of the upcoming Listening Session is to gather input from Indian Country on Program implementation, and to discuss steps to continue to address fractionation and the challenges it poses for tribal sovereignty and effective land use. The Listening Session agenda is as follows:

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| 9:00 a.m.-11:00 a.m. | Landowner Outreach Event (Subject matter experts will conduct an informational session to include appraisals, acquisitions, and financial education) |
| 9:00 a.m.-1:00 p.m. | Resource Tables open (Staff available to provide information about the Program, register willing sellers, and answer landowner questions) |
| 1:00 p.m. | Listening Session begins
Opening Remarks
Program Presentation |
| 1:50 p.m. | Comment Period – Tribal Leaders
Comment Period – Individual Landowners & General Public |
| 3:30 p.m. | Presentation on Future of Consolidation Work |

3:50 p.m.	Comment Period – Tribal Leaders Comment Period – Individual Landowners & General Public
5:00 p.m.	Listening Session ends Resource Tables re-open
5:30 p.m.	Resource Tables close

III. Seeking Tribal and Individual Input

Tribal input has been critical to making necessary enhancements to the Buy-Back Program. Feedback received from tribes and individuals has led directly to many of the measures incorporated since the creation of the Program. This includes feedback received from tribal leaders who most recently testified during the Senate Committee on Indian Affairs’ oversight hearing in December 2016 regarding Program implementation (https://www.doi.gov/sites/doi.gov/files/uploads/dep_sec_testimony_before_scia_2016.pdf).

The Program intends to make progress in a number of areas over the coming year (further explored in the “Next Steps” section of the 2016 Status Report). Tribes, landowners and others may provide written feedback on the Buy-Back Program. While the Program welcomes ongoing feedback, comments received by May 31, 2017, will be most helpful. While feedback is welcome related to any aspect of the Program, the following areas are of particular interest:

- 1. Locations Where Implementations May Occur.** Based on tribal feedback, the Program has used various criteria to determine the best sequence of implementation, including: severity of fractionation (a location’s number of fractionated tracts, interests, and acres); degree of ownership overlap between locations or geographic proximity; diversity of geographic locations to maximize efficiency, resources, and learning opportunities; appraisal complexity; overall interest of the tribe as

demonstrated through the fiscal year (FY) 2014 open solicitation and FY 2016 Planning Initiative periods; number of owners who have demonstrated an interest in selling fractional interests; and cost and time efficiency.

The Buy-Back Program's implementation schedule includes 105 locations through mid-2021. However, the Program continually evaluates its resources and progress and will determine whether the schedule should be updated, to include adding locations not currently scheduled, removing locations on the existing schedule, and/or returning to locations where purchase offers have already been sent. This evaluation will consider the potential for unused funds reserved for implementation costs and whether and how such funds could be used to further address fractionation. The Program will actively monitor sales and actual or anticipated costs of implementation at less fractionated or more complicated locations (e.g., those that involve restricted fee interests, unique laws – such as the Five Tribes in Eastern Oklahoma, and site-specific appraisals). The Program seeks feedback on what factors should be taken into consideration as it plans for future implementation with any remaining resources it may have.

2. **Off-Reservation Tracts** (e.g., Public Domain). Under the Settlement, fractional interests acquired by the Program will be held in trust for the tribe with jurisdiction over the land. However, tribal jurisdiction over off-reservation allotments may be unclear or even disputed. In its 2014 Status Report and Federal Register Notices dated November 24, 2014, and March 3, 2015, the Program requested feedback on whether and if so, how, the Program should incorporate off-reservation tracts, including any suggested standards or processes that could be applied. Tribal

feedback encouraged the Program to consider acquisition of off-reservation interests. The Program's 2016 Status Report states that the Program would consider inclusion of off-reservation tracts if tribal jurisdiction exists, acquisition meets the Program's implementation factors, and resources allow.

As contemplated in its 2016 Status Report, the Program seeks further input on implementation of this policy. First, given the Program's limited resources, the Program requests input on the relative priority of dedicating financial resources to off-reservation tracts when there is a significant amount of fractionated land located within reservation boundaries. Prioritizing the Program's limited resources toward addressing on-reservation fractional interests may better facilitate more efficient administration of the individual Indian trust and the longstanding "policy of the United States to encourage and assist the consolidation of land ownership ... in a manner consistent with the policy of maintaining the trust status of allotted lands...." (25 U.S.C. 2216(a)). Second, the Program also requests input on the approach the Program will use for determining if tribal jurisdiction exists, assuming that resources are available to pursue off-reservation lands and consistent with Program priorities. In order to determine whether there is tribal jurisdiction, the Program proposes to consider various factors relative to the off-reservation tract(s) at issue, such as:

- a. Treaties, statutes, executive orders, patents, or other legal instruments or laws applicable to the tract;
- b. Whether the tract is held in trust or restricted status;

- c. Whether the tribe seeking to participate in the Program has an ownership interest in the tract and how the interest was acquired;
- d. Whether another tribe or tribes own an interest in the tract and how the interest was acquired;
- e. Tribal membership of the individuals who own fractional interests in the tract;
- f. Types of governmental services provided to the tract and by whom (tribe, federal, state, county, or other government);
- g. Whether a local BIA office serves or performs activities relative to the tract;
- h. Whether the tract is located within an original or other reservation boundary;
- i. Whether the tract is adjacent to a reservation boundary;
- j. The distance of the tract from a reservation boundary if not within or adjacent to a reservation boundary;
- k. Whether tribal jurisdiction is recognized by other tribes, counties, and/or states; and;
- l. Whether there are competing claims of jurisdiction over the tract involving other tribes, including past or current litigation.

The above factors are intended to be applied on a case-by-case basis in an uncomplicated fashion, recognizing the unique goals and parameters of the *Cobell* Settlement Agreement and the Claims Resolution Act of 2010.

3. Looking Beyond 2022. The Program anticipates that more than 4 million equivalent purchasable fractionated acres may still exist after it fully expends the Consolidation Fund, which is expected to occur by November 24, 2022 (the date by which the Settlement dictates that any remaining funds be returned to the U.S. Department of the Treasury). Even with the Program's significant progress to date – and the results expected through 2022 – fractionation will continue to be an extremely complicated, ongoing problem in the long term. The Department will continue to work with Indian Country to explore options for land consolidation and requests tribal input and ideas on potential solutions and options for addressing long-term fractionation.

IV. Additional Resources

The Land Buy-Back Program for Tribal Nations' 2016 Status Report and additional information about the Buy-Back Program is available at: <http://www.doi.gov/buybackprogram>. In addition, landowners can contact the Trust Beneficiary Call Center at 888-678-6836 or visit their local Office of the Special Trustee for American Indians (OST) to ask questions about their land or purchase offers, and learn about financial planning resources. More information and detailed frequently asked questions are available at <https://www.doi.gov/buybackprogram/FAQ> to help individuals make informed decisions about their land.

Authority:

This notice is published pursuant to the Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 (2010) and the *Cobell* Settlement Agreement, *Cobell v. Salazar*, No. 1:96CV01285-JR (D. D.C. Dec. 7, 2009).

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